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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE**
8 **DISTRICT OF NEW JERSEY**

8 AFRODITE JAQUEZ,)
9)
10 Plaintiff)
11 v.) **Case No.:**
12)
13 MIDLAND CREDIT MANAGEMENT,) **COMPLAINT AND DEMAND FOR**
INC.,) **JURY TRIAL**
Defendant)

14
15 **COMPLAINT**

16 AFRODITE JAQUEZ (“Plaintiff”), by and through her attorneys, Kimmel & Silverman,
17 P.C., alleges the following against MIDLAND CREDIT MANAGEMENT, INC. (“Defendant”):

18 **INTRODUCTION**

19 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15
20 U.S.C. § 1692 *et seq.* (“FDCPA”) and the Telephone Consumer Protection Act, 47 U.S.C. § 227
21 *et seq.* (“TCPA”).

22 **JURISDICTION AND VENUE**

23 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v.
24 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).
25

1 17. Plaintiff knew that Defendant's calls were automated as they started with a
2 noticeable pause or delay with no caller on the line before transferring to a live representative or
3 terminating.

4 18. Defendant's telephone calls were not made for "emergency purposes," but rather
5 were placed with the intent of collecting a debt allegedly owed by Plaintiff.

6 19. Shortly after the calls started, Plaintiff demanded that Defendant stop placing
7 calls to her cellular telephone.

8 20. However, Defendant ignored Plaintiff's request and continued to call her.

9 21. Once Defendant knew its calls were unwanted any further calls served no lawful
10 purpose and could only have been placed for the purpose of harassing Plaintiff.

11 22. Defendant's actions as described herein were taken with the intent to harass,
12 upset and coerce payment from Plaintiff.

13 23. Plaintiff found Defendant's repeated calls to be invasive, harassing, annoying,
14 frustrating, and upsetting.

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17 **COUNT I**
18 **DEFENDANT VIOLATED §§ 1692d and d(5) OF THE FDCPA**

19 24. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at
20 length herein.

21 25. A debt collector violates § 1692d of the FDCPA by engaging in conduct of the
22 natural consequence of which is to harass, oppress, or abuse any person in connection with the
23 collection of a debt.

1 26. A debt collector violates § 1692d(5) of the FDCPA by causing a telephone to ring
2 or engaging any person in telephone conversation repeatedly or continuously with intent to
3 annoy, abuse, or harass any person at the called number.

4 27. Here, Defendant violated §§ 1692d and 1692d(5) of the FDCPA by repeatedly
5 calling Plaintiff repeatedly and excessively on her telephone numbers to collect an alleged
6 personal debt and continuing to call repeatedly after being told to stop calling and knowing its
7 calls were unwanted.

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9 **COUNT II**
10 **DEFENDANT VIOLATED THE**
 TELEPHONE CONSUMER PROTECTION ACT

11 32. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at
12 length herein.

13 33. Defendant initiated multiple automated telephone calls to Plaintiff's cellular
14 telephone using a prerecorded voice.

15 34. Defendant initiated these automated calls to Plaintiff using an automatic telephone
16 dialing system.

17 35. Defendant's calls to Plaintiff were not made for emergency purposes.

18 36. After Defendant was told to stop calling, Defendant knew or should have known
19 it did not have consent to call and that any consent it may have thought it had to call was
20 revoked, yet Defendant intentionally and knowingly continued to place autodialed calls to
21 Plaintiff's cellular telephone.

22 37. Defendant's acts as described above were done with malicious, intentional,
23 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
24 purpose of harassing Plaintiff.
25

1 38. The acts and/or omissions of Defendant were done unfairly, unlawfully,
2 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense,
3 legal justification or legal excuse.

4 39. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
5 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
6 damages.

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9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, AFRODITE JAQUEZ, respectfully prays for a judgment as
11 follows:

- 12 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1) and 47
13 U.S.C. §227(b)(3)(A);
- 14 b. Statutory damages of \$1,000.00 for each Plaintiff for the violation of the
15 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 16 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
17 costs, pursuant to 15 U.S.C. § 1693k(a)(3);
- 18 d. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- 19 e. Statutory damages of \$500.00 per violative telephone call pursuant to 47
20 U.S.C. § 227(b)(3)(B);
- 21 f. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C.
22 §227(b)(3);
- 23 g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3)
- 24 h. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, AFRODITE JAQUEZ, demands a jury trial in this case.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

RESPECTFULLY SUBMITTED

Date: May 22, 2020

By: /s/ Amy L. Bennecoff Ginsburg
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